Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:
Notice of Proposed Rulemaking
Schools and Libraries Universal Service
Support Mechanism
Adopted: May 20, 2010
Schools and Libraries Universal
Support Mechanism

FCC 10-83

GN Docket No. 09-51

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COMMENTS of E-RATE PROVIDER SERVICES, LLC

E-Rate Provider Services, LLC.
166 Deer Run
Burlington, CT 06013
(860) 404-8883
www.erateproviderservices.com

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E-rate Provider Services ("EPS") respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice regarding the Notice of Proposed Rulemaking (NPRM) for the Schools and Libraries Universal Service Mechanism. E-rate Provider Services is a consulting firm serving Service Providers in the E-rate program. E-rate Provider Services' purpose is to assist E-rate Service Providers in navigating the complexities of the program, providing sales and compliance assistance, cost allocation services, bid and proposal review, and staff training.

As the E-rate Program enters its 13th year, although the program has done an admirable job of distributing funds efficiently to the poorest applicants, there remains a constituency, as noted by the FCC, which has been underserved: school districts that are not quite poor enough to get funded, yet poor enough that funding their own networks is difficult.

 Fundamentally, the program does not have enough money to meet its objectives; the goal of stretching the current funding, while laudable, is undercut by the underlying math. There are over 100,000 schools in the United States. At an estimated average cost of $500,000 per school, the projected cost to cable and network every school in the U.S. would be over $50 billion dollars, and this figure does not include libraries. An even division of Priority 2 funding by entity, *(assuming 1 billion dollars for Priority 2 funding),* yields the figure of $10,000.00 per building per year *(not including libraries)*.

Clearly, without some significant changes to the program, this figure is an impossible standard. E-rate Provider Services also notes that in a resource-constrained program, to move money to one set of applicants, by definition requires it be taken from other applicants, and has structured its recommendations to balance the equation, so that the loss of the ability to file for some schools at 90% is offset by the ability to file for ALL of a district's schools at, for example, 70%. Equally clear is that the FCC intends to make significant changes to the E-rate Program, changes more significant than correcting a minor rule, procedure, or form. The call to channel more funds to lower discount Priority 2 applications, if implemented, will lower the amount of funding going to many of the applicants who currently receive it.

Therefore, E-rate Provider Services is proposing a series of changes (or commenting on changes that the FCC has already proposed) to simplify the program, and help distribute as much of the funds as possible to the second tier of applicants. The summary of our topics of comment are:

1. The Discount & Funding Priority Mechanism
    a. Revise the Discount Matrix
    b. Eliminate the "Rural" designation
    c. Establish a "set-aside" for Priority 2 funding equal to 40% of the total fund
    d. Revise the methodology for calculating consortia discounts
    e. Eliminate the 2/5 Rule
    f. Cap the funding a district can receive to $100,000/entity.
    g. Restrict those entities which have received Internal Connections funding within the last 3 years from receiving funding for another 2 years.
2. Basic Maintenance
3. Dark Fiber and Internet Access
4. Technology Plans
5. Summary

History and Ramifications

In order to achieve the FCC's goal of distributing Priority 2 funding to more applicants, one or more of the following things must happen:

- The pool of funds must grow;
- Applicants must pay more for their services;
- Fewer services should be eligible for discount;
- Priority 1 funding must be capped and/or Priority 2 funding must be protected;
- Entities must have their funding capped on a "per entity" or "per student" basis.

Fundamentally, the FCC's stated intention of distributing more funding to more Priority 2 applicants means that, absent a significant increase in the fund, less money must go to the large urban centers who have been the primary beneficiaries of Priority 2 funding since the inception of the program. E-rate Provider Services notes that the Council of Great City Schools, along with most of the large cities, will likely comment that the need of their constituencies is great, and that the purpose of the program, as originally constituted, is being fulfilled by channeling the funds to the large city school districts across the nation, and they will resist calls to reduce the amount of funding that they receive. E-rate Provider Services comments that their anticipated points are absolutely valid; however, we also comment that it appears that, by issuing an open call for alternative suggestions on how to change how funds are distributed, the FCC is looking for "big ideas," and is willing to implement changes which will dramatically alter the funding landscape.

E-rate Provider Services takes no position on the wisdom or advisability of the underlying Broadband Plan, but presents the comments contained in this document as an alternative mechanism that will allow the FCC to attain, to some degree, its new funding distribution goals. E-rate Provider Services, while acknowledging that some applicants will receive less funding under the plan described herein, predicts that many more applicants that have not received funding before will, for the first time, receive Priority 2 E-rate funding. We also note that although the overall amount of funding going to the large cities will be reduced under this plan, the lower-discount schools within the district will now receive the same discount as the higher-discount schools, thus allowing a more even and equitable distribution of technology within a single district.

Discussion

E-rate Provider Services appreciates the fact that the FCC accepted its suggestion to eliminate the weighted average. Using a district's raw data to calculate its Simple Average (SA) will be a much-needed simplification in the process. However, one aspect of the weighted average calculation that was beneficial was the fact that using the weighted average generated 'mid-step' results, meaning, discount results between the actual discount tiers were usually generated, i.e. 78%, 61%, etc. Comparing the SA, *(which is our term for the percentage generated by dividing the number of eligible children in a district by the total number of children)* versus the currently constituted discount matrix will yield six possible outcomes: everyone will be either 20%, 40%, 50%, 60%, 80% or 90% (following the Urban Discount Matrix), which will undoubtedly result in a single large discount tier being partially funded. Further, there are many large urban school districts that would immediately find all of their schools eligible to purchase at 90%, since they have SAs of 75% or above, which is contrary to the FCC's stated goal of pushing Priority 2 funding to schools which have not previously received it.

Revise the Discount Matrix

To address this, EPS proposes to revise the Discount Matrix altogether, using the following Priority 1 and Priority 2 Matrices for all future E-rate funding requests:

NSLP SA*%	Priority 1	Priority 2
1-9%	30%	30%
10-19%	40%	40%
20-29%	50%	45%
30-39%	60%	50%
40-49%	65%	55%
50-59%	70%	60%
60-64%	75%	70%
65-69%	80%	72%
70-74%	82%	74%
75-79%	84%	76%
80-84%	86%	78%
85-89%	88%	80%
90%+	90%	85%

*SA= Simple Average, that is, (eligible students/total students).

The intention of this discount matrix revision is to allow the Simple Average (SA), to compare against a revised matrix to generate the previous weighted average score for each district. For example, if Anytown, USA had a weighted average under the previous system of 72%, E-rate Provider Services attempted to recreate a similar discount using a much simpler method. Clearly, an exact translation is difficult, but E-rate Provider Services is optimistic that the variance can be minimized, and that the tremendous simplification in the program gained by adopting this method outweighs the small increase or decrease in Priority 1 discount percentage.

In addition, E-rate Provider Services calculated a 5-10% reduction in Priority 2 discount percentage, across the board. Most commenters over the past decade have supported a decrease in the funding percentage for Priority 2 applications. This revised matrix implements those suggestions.

Eliminate the "Rural" Designation

As the FCC noted, it is difficult, using a district discount determination methodology, to assign a higher discount to one school over another within a single district. In addition, there are other funding sources available to rural district, such as the BTOP fund, which can help offset any discount falloff. Therefore, in the interest of simplification of the program, E-rate Provider Services proposes to discontinue the use of the Rural vs. Urban designation.

Institute a Priority 2 "Set-Aside"

The FCC clearly stated that its goal was to encourage schools and libraries to be able to complete their internal school-wide networks using E-rate funds. Equally clear is the fact that year after year, Priority 1 requests grow, and threaten to "crowd out" all Priority 2 requests. E-rate Provider Services comments that capping the funding devoted to Priority 1 funding accomplishes the following:

- Guarantees funding for some Priority 2 applications;
- Allows the SLD to begin funding Priority 2 applications much earlier in the process;

E-rate Provider Services comments that if the FCC's proposal to increase the funding cap commensurate with a cost of living percentage is accepted, the fund may rise to $2.5B or higher, and that a 40% set-aside would guarantee $1B in Priority 2 funds, while limiting Priority 1 funds to $1.5B. Further, using a percentage of the overall fund, rather than a set figure, allows for a simpler division in the case of a fund rollover from prior years; an influx of funds from past years would benefit both sides of the funding equation.

E-rate Provider Services comments that the Broadband Plan document clearly calls for Priority 2 funding for lower-discount districts. Further, E-rate Provider Services reiterates that the only way to effect this is to guarantee that some funding goes to Priority 2, *(that Priority 1 does not continue to expand and consume all available funding),* and that the only basic method to accomplish this, absent an overall increase in the fund, is to lower the amount of Priority 1 funding. There are three basic methods to accomplish this: lower the Priority 1 discount, which hurts all schools equally, rich or poor; cap the Priority 1 funding, which disproportionately affects wealthier schools, or fund fewer Priority 1 services, by making basic voice ineligible, or other draconian measures. E-rate Provider Services believes that the cap method, proposed herein, best accomplishes the goal in question while maintaining the basic philosophy of the program.

E-rate Provider Services also comments that implementing a cap of this sort functionally and fundamentally alters the fund, removing the competition between Priority 1 and Priority 2 providers, as they would not be competing for the same funds, and in effect eliminating funding "priorities" altogether, and the two portions of the fund could be treated as parallel funds, rather than competitive. E-rate Provider Services comments that renaming the two portions of the fund "Extra-Building" and "Intra-Building" might crystallize the difference (although 'fund naming' is not our specialty).

Revise the Methodology for Calculating Consortia Discounts

E-rate Provider Services comments that the method for calculating the discount of a district scales very well for any size consortium. Dividing the sum of eligible children by the total number of children (eligible/total) and comparing that score versus the appropriate Priority 1 or Priority 2 Discount Matrix is a simple, straightforward method to generate a consortium discount. This method also discourages the dishonest practice of adding small, poor districts to a consortium in order to disproportionately offset larger, less poor districts. E-rate Provider Services comments that this simple change will make the program less complex, and prevent a wasteful and dishonest discount calculation method.

Eliminate the 2/5 Rule

E-rate Provider Services comments that the 2/5 Rule has not served its intended purpose, and adds needless and substantial complexity to the E-rate Program. The funding threshold has remained fairly constant, meaning the anticipated availability of funds to lower discount levels has not occurred. Therefore, E-rate Provider Services recommends eliminating the 2/5 Rule. In the following section, we propose a simpler method of generating simpler results.

Cap the Amount of Funding a District can Receive

E-rate Provider Services comments that even with the discount matrix adjustments proposed, the large urban centers will continue to receive the vast majority of available Priority 2 funds. Therefore, E-rate Provider Services proposes to institute a cap on the total amount of funding a school district or library system can receive of $100,000/school or $25,000/library, per year, with an overall district-wide cap of $30,000,000 (whichever is less). Applicants could apply for $100,000 for each school in their district, but could use those funds in any school as they saw fit. For example, a district of 50 schools could apply for $5,000,000 in funding, without restriction in which buildings they could expend the funds. The district could choose to spend $500,000 in each of 10 buildings, $200,000 in each of 25 buildings, $2,500,000 in each of 2 buildings, etc.

One exception to the cap would be smaller districts, with one or two buildings. E-rate Provider Services recommends allowing districts to apply for a minimum of $300,000, regardless of the number of buildings in the district.

The underlying concept is that school districts could put $500,000 into a school once every five years. Coupled with the elimination of the 2/5 rule, this should allow funds to flow to those mid-discount entities which have not previously received funding. Giving a district 20% of the funds it needs, each year, with fewer restrictions, should allow it to complete its basic networking within 5 years. E-rate Provider Services comments that the same outcome could be achieved by a "per student" cap, but judged that a "per building" cap might be simpler to maintain and adjudicate.

Finally, please note that the figures presented above are Pre-Discount amounts; a 70% discount district of 40 schools could request $4,000,000 in funding. At 70%, the SLD would commit $2,800,000, and the district would be responsible for $1,200,000.

Impose a 3-Year Moratorium on Previously Funded Entities
Receiving New Internal Connections Funding

E-rate Provider Services comments that in order to allow previously unfunded entities to "catch up," the SLD should stop internal connections funding for any entity that has received any internal connections funding within the last three years. In short, treat them as if they had exhausted their 2/5 eligibility. This will allow funding to flow more readily to those entities that have NOT received funding in the past. Alternately, E-rate Provider Services comments that the FCC could establish a threshold, wherein, for example, the SLD could stop internal connections funding for any entity which has received over $50,000 in internal connections funding within the last three years.

E-rate Provider Services comments that the rules pertaining to Basic Maintenance services are badly broken, and in need of revision.

Basic Maintenance Timing

E-rate Provider Services comments that maintenance/warranty agreements between resellers or manufacturers and applicants are rarely synchronous with E-rate funding years. For example, if a customer purchases network equipment, the manufacturer generally throws in at least a year of warranty, and sometimes more with the original purchase price. However, unless the purchase occurs on July 1st, there will be a part of the original warranty that extends into the next E-rate funding year. Therefore, during the next funding year, the applicant has the choice between purchasing an overlapping warranty in order to "reset" the counter back to July 1st, or to prorate the second warranty by whatever offset was created by the delay of the original purchase. Most manufacturers sell yearly coverage, not monthly. This scenario is recreated every year thereafter.

False Audit Findings

E-rate Provider Services also comments that if the equipment does not break during the warranty period, if the applicant is audited for this time period, the SLD/KPMG audit team generates an audit finding, as it appears that the warranty purchase was unnecessary and wasteful. To their credit, the SLD does not seek recovery of funds for audit findings of this type. However, such audit findings appear in reports to the FCC, to the OIG and GAO, and to Congress, and artificially (and unnecessarily) inflate non-compliance figures. Further, applicants and service providers are left perplexed and disheartened by the process, and the SLD can provide no guidance on how to avoid an audit finding in the future. There was no error committed by the applicant that they can rectify.

Form 470 Denial Issues

E-rate Provider Services comments that applicants continue to receive denials of Basic Maintenance applications due to a failure to check the "Basic Maintenance" option when filing a Form 470 for network services. Undoubtedly, many applicants assume that purchasing equipment conveys the right to purchase a warranty on that equipment, but the SLD does not agree.

Cost-Effectiveness/On-Site vs. Dispatched

E-rate Provider Services comments that FCC guidance regarding "On-Site" vs. "Dispatched" maintenance is contradictory and often at odds with general industry practice. For example, in rural/remote areas, it is often far more cost-effective to station a full time technician on-site than it is to dispatch the same technician from a distant city where travel time becomes a significant factor. Conversely, in larger, urban centers, where the frequency of repair is such that stationing multiple technicians across the district makes the most financial sense, such requests are highly scrutinized and often denied. Last, due to guidelines about Waste, Fraud and Abuse, districts are prevented from utilizing one of the most common techniques for minimizing downtime: the spare pool. Keeping a few spares on site is an excellent defense against long outages, and can be extremely cost-effective, and yet this practice is prohibited by program rules.

Summary

E-rate Provider Services comments that fundamentally, maintenance/warranty services do not naturally fit within the structure of the E-rate program. Many of the cost-effective techniques, used throughout the industry, are denied to applicants because they do not comply with program rules, including full-time, on-site personnel, and pools of spare equipment. Further, due to timing and service classification issues, applicants are forced to perform complicated financial calculations, and could still receive an audit finding if their equipment does not require service during the funding year in question.

Recommendations

E-rate Provider Services recommends taking one of two paths, either:

Change the Basic Maintenance Category

This approach would keep the currently eligible basic maintenance list of services, within the separate category of Basic Maintenance, but would make several adjustments:

- Change Basic Maintenance from a recurring to a non-recurring service.
- Allow applicants to reset basic maintenance timing back to July 1st to synchronize with the E-rate funding year, and waive (for the reset) the prohibition against duplicating services.
- Allow applicants to keep a small pool of spare equipment, deeming it a highly cost-effective method of delivering hardware break/fix services, without generating an audit finding.
- Cap Basic Maintenance expenditures at 10% of the Internal Connections per district cap, or $10,000 per entity (pre-discount). For example, a 50 school district could apply for $5,000,000 in Internal Connections funds, and $500,000 in Basic Maintenance funds, but would have greater flexibility on how to spend those funds.

Eliminate Basic Maintenance as a Service

This approach would eliminate Basic Maintenance altogether, disallowing all warranty and upkeep work, except for the manufacturer's warranty that comes with any new equipment. The advantage of this approach would be a great simplification in the process and freeing up of significant funds; the disadvantages are, forcing districts to absorb even more of the costs of their network, and running a greater risk that a broken network cannot fulfill its intended purpose.

Discussion

E-rate Provider Services comments that, in general, more options are better than fewer. Schools and libraries, under the proposed changes, can continue to contract for managed services from a common carrier, or opt to contract for non-managed, dark fiber from a non-common carrier. E-rate Provider Services fully supports these proposed changes. In addition, E-rate Provider Services comments that the FCC has the opportunity to remove all of the barriers restricting the type of service category an applicant can contract with for the WAN services.

Currently, if an applicant contracts for Internet Access services, they must cost-allocate any administrative functionality from the funding request. Aside from being complicated and time-consuming, this gives Telecommunications Providers a distinct advantage over Internet Access providers, in that schools and libraries need wide-area networks (WANs) to perform their basic administrative functions.

E-rate Provider Services comments that removing the restrictions on who can provide a WAN should carry over to Internet Access providers. In short, if the FCC proposes to allow municipalities to provide dark fiber, it should also allow Internet Access providers to provide WANs without requiring essential functions to be cost-allocated.

E-rate Provider Services comments that there are other technologies and transport media which could prove beneficial to applicants with special circumstances. For example, point to point wireless has pertinent uses in urban school districts that often have adjunct buildings proximate to the main school building but separated by a public right of way. Alternately, rural entities might have buildings separated by a river, a canyon, or other geographic features, and who might benefit from the removal of the requirement for a traditional transport medium. In short, there are often much more cost-effective technologies available to applicants if service provider status is removed as a requirement.

Summary

E-rate Provider Services recommends the following:

- Allow fiber to be provided by non-Telecommunications Providers.
- Allow Internet Access providers to provide WANs without required the applicant to cost-allocate the bandwidth by usage.
- Remove the rebuttable presumption that prohibits applicants from using cost-effective, internal connections solutions to cross a public right of way to deliver services to adjunct school buildings.
- Allow the use of non-fiber technologies, when cost-effective and appropriate.

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Discussion

E-rate Provider Services comments that the technology plan described in the NPRM in Paragraph 20, Page 9, bears little similarity what a school writes as its educational technology plan. Because the business of a school system is to educate its students, its technology plan generally concerns how to effectively teach children about technology, i.e. "*How to Use a Word Processor*" and teach children using technology, i.e. "*Using the Internet to Understand Elementary Math.*" The document described in the above referenced section is an implementation plan, or a strategic architecture plan; the types of activities described in the NPRM, including "(ii) is has taken into account any unique installation requirements, appropriate placement of facilities, and time demands," do not generally appear in an educational technology plan. Therefore, E-rate Provider Services comments that the recommendation to keep or not keep a technology plan requirement, based on an incorrect understanding of the document in question, seems counterproductive. E-rate Provider Services does note that the activities described above are valuable; however, they generally take place during the "design and engineering" phase of an Internal Connections network project, when the Site Surveys and walk-throughs are conducted.

E-rate Provider Services also comments that, in general, all school districts, regardless of size, have significant overlap in their technology goals. For example, most multi-school districts require inter-building communication for administrative purposes. Most multi-school districts require some level of building wiring for voice and data, with associated infrastructure-level electronics. The decision, for example, of whether to use voice-over-IP or a traditional PBX, or to use 10MB, 100MB, or 1GB Ethernet, does not show up in normal educational technology plans, and is often decided during the bidding process, and determined by cost and budget. E-rate Provider Services notes that in the above decision examples, the choice has little to no educational ramifications; educators are, rightfully, concerned about education, first and foremost, and technology second, and further comments that perhaps a better division between 'required' and 'not required' would be the complexity of the request, rather than the size of the district. In short, if a district wishes to simply provide basic, inter-school data connectivity, an in-building LAN, or a basic PBX, these functions can be assumed to be covered by a statewide 'umbrella' plan. However, if a district wishes to implement a higher-complexity, convergent network, a higher level of planning can be required.

Rather than providing a technology roadmap and installation guide for schools, E-rate Provider Services comments that a better use for an educational technology plan would be to determine a district's readiness to involve technology in supporting their direct instruction, instructional support, and administrative functions. E-rate Provider Services comments that preparation to use technology to change how a school district educates its children, supports its teachers, and conducts its business is far more valuable than a document which details where wiring closets are to be placed.

Summary

E-rate Provider Services recommends the following:
- Change the Technology Plan requirements to more accurately reflect the educational technology planning school districts are currently doing.
- Eliminate the Tech Plan requirement for basic services, including basic telephone service, a basic PBX, a low-bandwidth WAN, or a basic in-building LAN.

Require a higher degree of technical detail for higher-complexity funding requests, including non-basic voice, video, and data networks, high-bandwidth WANs, and the like.

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E-rate Provider Services appreciates this opportunity to offer comments and suggestions, and especially appreciates the willingness the FCC has demonstrated to think "out of the box"; clearly, the new priorities, as articulated in the National Broadband Plan, will cause a top to bottom rethinking of the E-rate Program, and E-rate Provider Services appreciates the opportunity to be a part of the solution.

E-rate Provider Services comments that while the proposals contained in this document are hard suggestions regarding numbers and percentages, they are also approximations, and more importantly, core principles. For example, while we suggested a 40% set-aside for Priority 2, there is no reason it could not be 35%, or 45% - the actual numbers and percentages can and should be thoroughly reviewed and, if necessary, adjusted, in the final version.   Adopting a set-aside for Priority 2 is important; that it be exactly 40% is much less important, and we urge the FCC to view any comments contained herein in this light.

E-rate Provider Services comments that we anticipate various constituencies from across the country will make well-reasoned and compelling arguments as to why their particular interest group cannot afford a funding decrease of any sort, and should therefore be exempt from any proposed changes that might have a negative impact on them. Ironically, E-rate Provider Services will undoubtedly agree with many of them. Large, urban school districts, in light of the ongoing disaster that is public sector funding, are extremely financially strapped. Rural districts will argue, with equal truth, that it will be difficult to give up their "rural" designation and the additional discount it conveys. Priority 1 providers will argue that limiting Priority 1 (by any method) is counter to the original intent of the program, and argue vehemently against easing any of the requirements that will allow non-telecommunications providers to provide previously regulated and restricted services, and many applicants will contend that limiting Priority 2 funding, by the methods outlined herein, will cause hardship.

In response, E-rate Provider Services strongly comments that if the FCC does not make some basic changes in how it prioritizes funds and administers the program, then the goals it outlined in the Broadband Plan, pertaining to E-rate, will fail. Fundamentally, absent a large increase in overall funds, for one set of applicants to receive more funding, another group will receive less. The suggestions E-rate Provider Services has presented in this document are designed to minimize the negative financial impact of the proposed changes while achieving, in some measure, the goals outlined in the Broadband Plan.